



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2301 OF 2006

1. Smt. Surekha Dnyaneshwar Sonawane)
Aged about 37 years,)
residing at Row House No.6,)
Durga Society, Airoli, Navi Mumbai.)
)
2. Milind Govind Jadhav,)
Aged about 28 years, residing at)
Ram Nagar, Digha Village, Belapur Road,)
Navi Mumbai.) Petitioners.

V/s

1. The Commissioner of Police,)
Navi Mumbai)
)
2. Shri Ashok Pandhare,)
Assistant Commissioner of Police,)
Vashi Division, Navi Mumbai)
)
3. Shri Padmakar G. Juikar,)
Senior Inspector of Police)
and Investigation Officer,)
Rabale Police Station, Navi Mumbai.)
)
4. State of Maharashtra) ... Respondents.

Mr. S.R. Chitnis, Senior Counsel i/b Mr. Nitin Sejpal and
Ms Pooja Bhojne for Petitioners.

Dr. F.R. Shaikh, APP for the State.

**CORAM: V. M. KANADE &
P.D. KODE JJ.**

**Date on which the judgment
is reserved : 31/01/2012**

**Date on which the judgment
is pronounced: 21/02/2012**

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. By this Petition which is filed under Article 226 of the Constitution of India, Petitioners are seeking writ, order and direction, directing the Respondents to pay compensation of Rs 25,000/- each per day for their illegal detention from 7th October, 2006 to 13th October, 2006 and also for declaration that the Petitioners were illegally arrested in C.R. No.I-2008 from 7th October, 2006 to 13th October, 2006.

2. Brief facts are as under:-

3. One Dnyaneshwar Sonawane, who was the husband of Petitioner No.1, was killed on 8th October, 2002. An FIR was registered on the same day by the present Petitioner No.1 vide C.R. No. I-228 of 2002 for the offence punishable under sections 302, 449, 147, 148, 149 read with section 34 of the Indian Penal Code. Four persons were arrested by the Police and charge-sheet came to be filed and the Sessions Judge, Thane was pleased to acquit the four accused persons by his

judgment and order dated 16th August, 2003.

4. Thereafter, after two years, one Mohan Sonawane who claimed to be the real uncle of the deceased, wrote a letter to the President, Human Rights Commission, Mumbai in which he alleged that he had learnt that Petitioner No.1 herself had planned her husband's murder. The acting Chairman of the Maharashtra State Human Rights Commission on 18th October, 2005 passed an order and transmitted the complaint to the Commissioner in Mumbai for disposal in accordance with law.

5. An application was filed by the Assistant Commissioner of Police, Vashi Division, Navi Mumbai on 10th January, 2006 before the JMFC, CBD, Navi Mumbai, seeking permission to conduct brain mapping test as well as lie detection test on both the Petitioners and Mohan Sonawane. The said application was allowed by the JMFC and the said order of the JMFC was challenged by the Petitioners in Writ Petition No.372 of 2006, which Writ Petition was allowed and the impugned order dated 10th January, 2006 passed by the JMFC, CBD, Navi Mumbai was quashed and set aside and a direction was given that if any fresh crime is registered and in case a lie detection test or brain mapping test is required to be conducted on the Petitioner then 72 hours notice should be given to the Petitioner. Petitioner No.1 then made representation to the Senior Inspector of Police dated 7th August, 2006.

6. It is the case of Petitioners that in spite of the order passed in Criminal Writ Petition No.372 of 2006, Investigating Officer arrested both the Petitioners and they were shown arrested in C.R. No. I-228 of 2002 and the learned Magistrate was pleased to remand them to police custody and then to judicial custody till 22nd October, 2006. Petitioners then filed Criminal Application No.2201 of 2006 challenging the order of remand passed by the learned Judicial Magistrate, First Class, Vashi dated 8th October, 2006. In the said application, a statement was made by the Public Prosecutor that the Petitioners would be released forthwith and in view of that statement, Petition was disposed of and other contentions, however, were kept open. Petitioners, thereafter, filed this Petition seeking compensation.

7. Mr. Chitnis, the learned Senior Counsel appearing on behalf of the Petitioners submitted that after the acquittal of the accused by the Trial Court, an FIR No.I-228 of 2002 was no longer in existence and, as such, the Petitioners could not have been arrested in the same C.R. Secondly, it was submitted that the learned Single Judge of this Court in Writ Petition No.372 of 2006 had clearly held that the said C.R. No.I-228 of 2002 would not survive after a full fledged trial was held and the accused in the said case were acquitted. It was further submitted that the learned Single Judge also had directed that in the event fresh C.R. was to be registered, 72

hours notice should be given. It was submitted that in spite of clear finding given by the learned Single Judge, without giving notice and without registration of fresh C.R., Petitioners were arrested and were granted remand by the learned Magistrate and they were kept in custody for seven days from 7th October, 2006 to 13th October, 2006 and, therefore, the Petitioners were illegally detained. It was submitted that, therefore, Respondents should be directed to pay compensation @ Rs 25,000/- per day for seven days to each of the Petitioners. Reliance was placed on number of judgments of the Apex Court in support of the said submission.

8. On the other hand, the learned APP appearing on behalf of the State has invited our attention to the affidavit in reply filed by the Investigating Officer. He submitted that, initially, five persons were shown as accused in C.R. No.I-228 of 2002 and during the course of trial, the case against absconding accused Sanjay Deoram Dolas was separated and the remaining persons were tried. It was submitted that the fact that the case was separated against the absconding accused Sanjay Deoram Dolas was not brought to the notice of the learned Single Judge (Coram: R.S. Mohite, J.) and, therefore, it was observed that the said C.R. No.I-228 of 2002 cannot survive on the conclusion of a full fledged trial which has resulted in acquittal. It was submitted that since the trial was separated, the said investigation in C.R. No.I-228 of 2002 was, thereafter, carried out with regard to the role

played by the absconding accused persons and the investigating agency proceeded against the Petitioners for completing investigation in the matter and in the interest of justice. It was submitted that, therefore, it could not be said that the Petitioners were illegally detained. He further submitted that the Petitioners were detained pursuant to the order of remand passed by the Judicial Magistrate.

9. After having heard the learned Senior Counsel appearing on behalf of the Petitioners and the learned APP appearing on behalf of the Respondents – State at length, in our view, it cannot be said that the Petitioners were illegally detained by the Investigating Officer. It is an admitted position that after the Petitioners were arrested, they were immediately produced before the Judicial Magistrate and the order of remand was passed and pursuant to the order of remand, they were kept in judicial custody till 22nd October, 2006. The contention of Mr. Chitnis, the learned Senior Counsel appearing on behalf of the Petitioners that C.R. No.I-228 of 2002 could not survive on account of acquittal of the four accused after a full fledged trial and the detention of the Petitioners in the same C.R. amounted to illegal detention, cannot be accepted. It has come on record that one accused viz. Sanjay Deoram Dolas was absconding and his trial was separated and, therefore, even though the four accused were acquitted, C.R. No.I-228 of 2002 in respect of Sanjay Deoram Dolas continued to remain on the file. It appears that this fact was not brought to the notice of the

learned Single Judge (Coram: R.S. Mohite, J.) and, therefore, the learned Single Judge had made an observation that after the full fledged trial of four accused and their acquittal, the said C.R. could not survive. The said observations obviously have been made because correct facts were not brought to the notice of the court. It is a matter of record that, thereafter, further investigation was carried out against Sanjay Deoram Dolas and also the present Petitioners and the separate charge-sheet has been filed against the Petitioners and which is pending trial. That being the position, it cannot be said that Investigating Officer had acted illegally.

10. So far as the contention of Mr. Chitis, the learned Senior Counsel appearing on behalf of the Petitioner that no notice was given as directed by the learned Single Judge in Writ Petition No.372 of 2006 is concerned, the said submission also cannot be accepted. Perusal of the said order clearly indicates that the order of the JMFC permitting lie detection test and brain mapping test was challenged before the learned Single Judge. The said order was set aside and the learned Single Judge observed that if the Investigating Agency wanted to carry out lie detection test or brain mapping test of the Petitioner, in that event 72 hours notice should be given by the Investigating Agency after the new offence is registered. As the record indicates, the said C.R. was further investigated against the absconding accused since the trial was separated and no brain mapping test or

lie detection test was to be conducted and, as such, question of giving 72 hours notice did not arise. The charge-sheet has been filed against the Petitioners and the criminal case is pending against them.

11. Taking into consideration the aforesaid peculiar facts and circumstances of the case, in our view, no case is made out for awarding compensation to the Petitioners as the detention of the Petitioners cannot be said to be illegal. Ratio of judgments on which reliance is placed will not apply to the facts of the present case since we are of the view that detention of the Petitioners cannot be said to be illegal.

12. Petition is accordingly dismissed.

(P.D. KODE, J.)

(V.M. KANADE, J.)

